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November 19, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 13, 2008

Case Number: TSO-0641

This decision concerns the eligibility of XXXXXXXXXXXXXXXX, (hereinafter referred to as "the Individual") to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ This decision considers whether, on the basis of the evidence in this proceeding, the Individual's security clearance should be restored. For the reasons stated below, I find that the Individual's security clearance should be restored.

I. BACKGROUND

On September 20, 2007, the Individual was arrested for Driving Under the Influence of Alcohol (DUI). The Individual had been arrested for Driving While Intoxicated (DWI) twice previously, on January 27, 1980, and November 13, 1975. After it was notified of the September 20, 2007, DWI, the Local Security Office (LSO) conducted a personnel security interview (PSI) of the Individual to address the derogatory information.² This PSI failed to resolve the security concerns raised by his three alcohol-related arrests. The LSO requested the Individual to undergo a forensic psychiatric examination by a DOE consultant psychiatrist (the DOE Psychiatrist). On February 28, 2008, the DOE Psychiatrist conducted an examination of the Individual. Exhibit 5 at 1. In addition to conducting this examination, the DOE Psychiatrist reviewed selected portions of the Individual's security file and selected medical records. On February 29, 2008, the DOE Psychiatrist issued a report (Report) in which he opined that the Individual met the criteria for alcohol abuse set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revised (DSM-IV-TR). *Id.* at 6-8. The DOE Psychiatrist further opined that the Individual was not sufficiently rehabilitated or reformed from his alcohol abuse. *Id.* at 8.

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

² The transcript of this PSI appears in the record as Exhibit 5.

Soon thereafter, the LSO initiated an administrative review proceeding. *See* 10 C.F.R. § 710.9. The LSO issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter) under criteria set forth at 10 C.F.R. § 710.8(j) (Criterion J).³ Specifically, the Notification Letter alleges that the Individual suffers from alcohol abuse and has a history of three alcohol-related arrests. Statement of Charges at 1.

The Individual filed a request for a hearing in which he made a general denial of the allegations contained in the Notification Letter. The LSO forwarded this request to the Director of the Office of Hearings and Appeals (OHA) who appointed me as Hearing Officer.

At the hearing, the LSO presented one witness: the DOE Psychiatrist. The Individual presented three witnesses: his spouse, his EAP Counselor (the EAP Counselor), and his brother. The Individual also testified on his own behalf. *See* Transcript of Hearing, Case No. TSO-0641 (hereinafter cited as “Tr.”).

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. THE SECURITY CONCERN AT ISSUE

As noted above, the sole security concern at issue is Criterion J. The LSO relied on the DOE Psychiatrist's diagnosis of alcohol abuse and the Individual's three alcohol-related arrests as justification for invoking this criterion. Excessive alcohol consumption often leads to the

³ The Notification Letter alleges, in relevant part, that the Individual has:

Been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as . . . suffering from alcohol abuse. 10 C.F.R. § 710.8(j) (Criterion J).

exercise of questionable judgment or the failure to control impulses, and can raise questions

about an individual's reliability and trustworthiness. *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued by the Assistant to the President for National Security Affairs*, The White House (December 29, 2005) (*Revised Guidelines*) Guideline G at 10.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Individual acknowledges that he has habitually used alcohol to excess and suffers from alcohol abuse. Tr. at 106. Accordingly, the only issue before me is whether the Individual has submitted sufficient evidence of rehabilitation and reformation to resolve the security concerns raised by his habitual use of alcohol to excess and alcohol abuse. After considering all of the evidence in the record, I find that he has done so.

The DOE Psychiatrist opined in his Report that the Individual would need to "participate in outpatient treatment of moderate intensity for a period of one year in order to provide adequate evidence of rehabilitation or reformation." DOE Exhibit 5 at 8. The DOE Psychiatrist defined "moderate intensity" as a "treatment regime such as SMART or Alcoholics Anonymous once per week, or substance abuse counseling on a frequency determined by his counselor." *Id.* The DOE Psychiatrist further opined that the Individual would need to abstain from using alcohol for "a minimum of one year since the last alcohol-related arrest (September 20, 2007)." *Id.*

The Individual testified that the last time he consumed alcohol was on September 20, 2007, the date of his DUI arrest. Tr. at 19-20. The Individual testified that he doesn't believe that he can safely use alcohol in moderation. Tr. at 20-21. The Individual testified that he has attended an outpatient treatment program, been meeting with an Employee Assistance Program (EAP)/Human Reliability Program Psychologist on a monthly basis, been obtaining counseling and educational services from an EAP Counselor, and been attending aftercare meetings. *Id.* at 14, 17-18, 21-24. The Individual also testified that he has decided to permanently abstain from using alcohol. *Id.* at 16, 19-20, 24.

In support of his assertion that he has discontinued using alcohol, the Individual has submitted evidence showing that he has been subjected to random alcohol tests over the last year that yielded uniformly negative results.⁴ Tr. at 10. In addition, the Individual's spouse testified that the Individual no longer uses alcohol and that he has assured her of his intention to permanently abstain from the use of alcohol. Tr. at 48-49. The Individual's brother testified that the Individual no longer uses alcohol. Tr. at 41. The Individual's brother testified that he and the Individual spend a good portion of their free time together and that the Individual confides in him. Tr. at 42. The Individual's brother testified that he has not observed the Individual using alcohol. Tr. at 41. The Individual's brother, who testified that he himself has been sober since

⁴ The DOE Counsel and DOE Psychiatrist reviewed copies of 57 test results and stipulated on the record that these test results showed that the Individual had tested negative for alcohol use on 57 occasions during the period beginning on November 20, 2007, and ending on September 8, 2008. Tr. at 10-14

1985, testified that after he and the Individual had discussed the Individual's problems with alcohol, he recommended that the Individual quit drinking. Tr. at 41. The Individual's brother testified that the Individual agreed that he needed to permanently refrain from using alcohol. Tr. at 42-43. Both the Individual's spouse and brother indicated that they had been present with the Individual at gatherings where alcohol was served and that the Individual had refrained from using alcohol at these gatherings. Tr. at 44, 49-50.

Under court order, the Individual attended a local outpatient treatment program (the outpatient program) for 76 hours. Tr. at 14, 17. At the hearing, the Individual submitted a letter from his counselor at the outpatient program indicating that the Individual began participating in the outpatient program on March 18, 2008. Individual's Exhibit 1. The letter further indicates that the Individual participated in group sessions for three hours a week for three months for a total of 76 hours. *Id.* After the Individual completed the court-ordered treatment, the Individual requested that he be allowed to continue participating in the outpatient program. He currently attends a one-hour aftercare program on a weekly basis at the outpatient treatment program. *Id.*; Tr. at 15, 17. The outpatient treatment program counselor's letter states: "At the present time [the Individual's] prognosis is good and he appears sincere in his recovery." Individual's Exhibit 1 at 1. The Individual testified that the outpatient treatment program has taught him a lot and enabled him to stay sober. Tr. at 17.

The EAP Counselor testified on the Individual's behalf at the hearing.⁵ He testified that he first saw the Individual in order to conduct a fitness-for-duty evaluation. Tr. at 28. He recommended that the Individual attend eight sessions of alcoholism education and awareness training at the EAP and undergo random alcohol testing. *Id.* These sessions started on October 31, 2007, and ended on December 19, 2007. *Id.* at 31. The EAP Counselor testified that the Individual has been straightforward and sincere. *Id.* at 30, 36. The EAP Counselor testified that both he and the EAP Psychologist were of the opinion that the Individual understands that he cannot use alcohol. *Id.* at 30, 35. He opined that the Individual has a good family support system. *Id.* at 35. The EAP Counselor testified that he believes that the Individual will continue to remain sober. *Id.* at 30, 37. The Individual's prognosis is "good" in the opinion of the EAP Counselor. *Id.* at 35-36.

The DOE Psychiatrist was present during the entire hearing. He testified after the other witnesses concluded their testimony. He testified that the Individual has now provided adequate evidence of rehabilitation and reform. Tr. at 59. The DOE Psychiatrist testified that he had recommended that the Individual abstain from the use of alcohol for one year. *Id.* At the time of the hearing, the Individual had abstained from using alcohol for just 11 days less than one year, which the DOE Psychiatrist believes is clinically equivalent to a year's sobriety. *Id.* at 59, 62-65. The DOE Psychiatrist testified that the Individual met his recommendations for treatment as well. *Id.* at 60. He further testified that the Individual understands that he cannot safely use alcohol. *Id.* at 59-60. The DOE Psychiatrist testified that the Individual's prognosis is "excellent." *Id.* at 60.

⁵ The EAP Counselor also testified that he had, in preparation for his testimony, reviewed the EAP Psychologist's (who was unavailable for the hearing) file on the Individual. Tr. at 28.

After carefully weighing all of the evidence in the record, including the testimony of the DOE Psychiatrist, I am convinced that the Individual recognizes that he suffers from alcohol abuse, is fully committed to his recovery and has provided sufficient evidence of reformation and rehabilitation. Accordingly, I am convinced that the risk that the Individual will return to alcohol use is acceptably low. The Individual has shown that he has been alcohol-free for over 50 weeks. He has obtained treatment for his alcohol abuse. He is committed to sobriety. I therefore conclude that the Individual has resolved the security concerns regarding his alcohol abuse.

V. CONCLUSION

For the reasons set forth above, I conclude that the Individual has resolved the security concerns raised under Criterion J. Therefore, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the Individual's security clearance should be restored. The DOE may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: November 19, 2008